IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1181 OF 2004

Rashila Suresh Jain ...Petitioner

Versus

State of Maharashtra ...Respondent

.....

Mr.Rajiv Patil with Mr.A.R.Varma i/b M/s.Mayur Narendra & Co. for Petitioner.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

APRIL 27, 2005.

P.C.

1. Heard Counsel for the parties.

2. I see no infirmity in the conclusion reached by the Court below in rejecting the prayer for return of property made at the instance of the present Petitioner. The present Petitioner is not the owner of the said property, whereas, the investigating agency had sealed the property, which was allegedly in possession of the accused Mahesh

Kumar Kothari at the relevant time.

3. Learned A.P.P. has invited my attention to the evidence collected by the investigating agency to indicate that the accused had purchased the property in question from the original owner Mr.Prithvinath Gupta.

4. On the other hand, Petitioner is relying on the document Agreement for Sale-Exhibit ‘A’ at Page 17 to contend that he has purchased the said property from one Mr.Kailashchand Jeetmalji Ganna, who in turn, had purchased from the said original owner Prithvinath Gupta.

5. In the first place, this document is inadmissible in evidence. The property in question is immovable property, for which, transfer can be effected only by a registered document. The document at Exhibit ‘A’, it is fairly accepted by Mr.Patil appearing for the Petitioner, is not a registered document. If it is so, on the basis of this document, it cannot be inferred that the Petitioner is the owner of the disputed property.

6. In other words, the document pressed into service by the Petitioner to assert ownership with regard to the disputed property is short of legal evidence to establish that position. In fact, this document will have to be impounded as is required by the provisions of Bombay Stamp Act.

7. Be that as it may, this document does not establish the fact that the Petitioner has become owner of the disputed property and if this document is to be discarded, the other documents which are pressed into service by the Petitioner at Exhibit 'B' to show that she had given the premises to one Mr.Maheshkumar Shankarlalji Lodha, who in turn, allowed the accused to conduct business in the disputed premises, will be of no avail.

8. If it is so, as the Petitioner has failed to establish the fact that he is the owner of the premises, question of entertaining his Application for return of disputed property, does not arise. On this reasoning itself, no interference is warranted with the view taken by the Court below.

Rejected.

A.M.KHANWILKAR, J.